



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 7, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0369

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion	Not Sustained (Inconclusive)
# 3	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee was unprofessional, used unreasonable discretion, and engaged in bias-based policing by directing subordinate SPD employees to remove graffiti from the sidewalk outside of the East Precinct building.

### **SUMMARY OF INVESTIGATION:**

The Complainant came forward to OPA with information and video indicating that SPD employees were washing away chalked messages written on and immediately outside of the East Precinct Building. Some of the messages read "Black Youth Matter" and "Black Health Matters." The Complainant chose not to provide a recorded interview or statement to OPA and did not respond to OPA's request for additional information. OPA commenced this investigation.

In the process of identifying all the SPD employees depicted in the video evidence, the Named Employee—the commanding officer of the East Precinct—identified himself as having ordered the removal of the messages depicted in the video. Accordingly, OPA classified the complaint against the Named Employee (NE#1) only.

In his interview with OPA, NE#1 described his role as the commanding officer of the East Precinct. NE#1 stated that he supervises about 100 sworn officers of different ranks and about 3 civilian staff, including the East Precinct's Equipment and Facilities Manager.

NE#1 stated that, since the protests during the Summer of 2020, the area around the East Precinct—and the building itself—has been a frequent target of graffiti. NE#1 stated that there was a long-standing order from the Chief of Police, through the Assistant Chief of the Patrol Bureau, that all graffiti was to be removed from the East Precinct building



itself, as well as the area around the East Precinct building. NE#1 stated that all graffiti was to be removed, regardless of content.

NE#1 provided a definition of “graffiti” consistent with Ordinance Number 118082, codified as Seattle Municipal Code (SMC) chapter 10.07: “unauthorized markings, visible from premises open to the public, that have been placed upon any property through the use of paint, ink, chalk, dye or any other substance capable of marking property.” SMC 10.07.010(C). NE#1 noted that the ordinance called for the “removal of such vandalism as soon as reasonably possible” and that, in passing the Ordinance, the City Council had called graffiti a “power visual symbol of disorder which erodes public safety, reduces the attractive physical qualities of neighborhoods, and can contribute to a downward spiral of blight and decay.” Seattle City Ordinance 118082.

NE#1 stated that even public entities could be subject to civil or monetary penalties for failing to abate graffiti visible on their property. Moreover, NE#1 stated that he ordered the removal of the graffiti under orders from the Chief of Police, relayed through the Assistant Chief of the Patrol Bureau at an Operations Bureau meeting, and that “we took all graffiti off, whether it was, you know, back the blue, whether it was Black Lives Matter, whether it was hate speech, whatever ... all graffiti was removed at that time.” NE#1 stated that he sent out a memo through email to his lieutenants that relayed the order “that we will continue to eliminate all graffiti, and to follow the ... graffiti nuisance ordinance, titled 10.07.” Despite a thorough search of NE#1’s emails, OPA was unable to locate any such email.

NE#1 also stated that, since this complaint was made against him, he amended his order directing his staff to remove only graffiti that “contains profanity, hate speech, or other language that would be offensive to a protected group or graffiti that somebody complains about.”

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional***

The Complainant alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.)

NE#1 stated—and the video provided by the Complainant does not refute—that NE#1 ordered officers under his command to remove all graffiti on and in the vicinity of the East Precinct building. NE#1 stated that he gave this order both under the direction of the Chief of Police, through the Assistant Chief of Patrol, and to comply with Seattle’s Graffiti Nuisance Code, SMC 10.07. Although the Complainant may either agree with the messages that were chalked onto the sidewalk and East Precinct building or disagree with NE#1’s decision to order graffiti removed, that does not mean that NE#1’s order was unprofessional. Moreover, the manner in which these messages were removed—dousing with water—was also not unprofessional.

Accordingly, OPA recommends that this allegation be Not Sustained (Lawful and Proper).

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion***

The Complainant alleged that NE#1 used unreasonable discretion.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

As discussed at Named Employee #1, Allegation #1, NE#1 stated that he ordered officers under his command to remove all graffiti on and in the vicinity of the East Precinct building regardless of content. If true, NE#1 exercised no discretion with respect to the content of the messages being removed. Although the video provided by the Complainant appears to show officers removing chalk messages stating, “Black Youth Matter” and “Black Health Matters,” these also appeared to be the only messages that were “chalked” on the sidewalk or building. Moreover, at least one of the videos provided by the Complainant appeared to be heavily edited in that segments of time appeared to have been spliced out. Conversely, NE#1 claimed in his interview that he issued his order concerning the graffiti to his subordinates by email, but OPA was unable to locate a copy of this email. Accordingly, there is insufficient evidence to determine whether NE#1 used reasonable discretion with respect to the content of the messages that he ordered removed.

Arguably, it could also be alleged that NE#1 exercised discretion concerning whether to order the graffiti be removed at all. However, considering the Graffiti Nuisance Code, OPA cannot say that such a use of discretion was unreasonable.

Accordingly, OPA recommends that this allegation be Not Sustained (Inconclusive).

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #3**

***5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#1 engaged in biased-based policing.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (*See id.*)

NE#1 denied engaging in biased-based policing. There is no evidence to suggest that NE#1 had any knowledge whatsoever of who created the graffiti that he ordered removed. Accordingly, NE#1 had no knowledge of the characteristics of the graffiti’s authors. However, to the extent that this allegation is premised on NE#1 discriminating against the content of the graffiti—or making assumptions about possible characteristics of the graffiti’s authors based on that content—there is insufficient evidence to determine whether NE#1 did so. *See* Named Employee #1, Allegation #2.



Accordingly, OPA recommends that this allegation be Not Sustained (Inconclusive).

Recommended Finding: **Not Sustained (Inconclusive)**